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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/021,709	12/12/2001	Alan Glen Solheim	GSH 08-893504	2300
32498	7590	07/28/2006	EXAMINER	
CAPITOL PATENT & TRADEMARK LAW FIRM, PLLC ATTN: JOHN CURTIN P.O. BOX 1995 VIENNA, VA 22183			PAYNE, DAVID C	
			ART UNIT	PAPER NUMBER
			2613	

DATE MAILED: 07/28/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

57

Office Action Summary	Application No.	Applicant(s)	
	10/021,709	SOLHEIM ET AL.	
	Examiner	Art Unit	
	David C. Payne	2613	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 May 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-12 is/are allowed.
- 6) ☒ Claim(s) 13 and 18-20 is/are rejected.
- 7) ☒ Claim(s) 14-17 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed 22 May 2006 have been fully considered but they are not persuasive.

Al-Salameh discussed his invention in conjunction with several alternative embodiments that would produce wide-spectrum optical analysis and may also be utilized in conjunction with the present invention, as would be readily apparent to those skilled in the art, Col./Line: 5/35-38. Each of the alternative embodiments can be found in Col./Line: 4/38-5/34. As such, the present invention is used over a multi-wavelength system.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claim 13, 18, 19 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Al-Salameh et al. US 6,317,231 B1 (Al-Salameh).

Re claim 13, 18, 19 and 20

Al-Salameh disclosed the

A wavelength exerciser ((NCE (240 of Figure 2) and Optical Monitoring Unit (260 of Figure 2)) for an agile network, comprising: a path selector (NCE (240 of Figure 2)) for selecting a test path between a source node (NCE (240 of Figure 2)) and a destination node (200 of Figure 2); a fault finder (OA 284 of Figure 2, step 384 of Figure 3) for detecting a fault whenever said test connection fails (e.g., col./line: 8/5-10); and a test connection controller (NCE (240 of Figure 2, e.g., col./line: 6/30-35) for controlling operation of said path selector, said wavelength assignment module and said fault finder.

Al-Salameh does not explicitly disclose the wavelength assignment module or call setup module (NCE and OMU) as assigning successively a plurality of wavelengths to said test path for establishing a test connection along said test path. Al-Salameh merely disclosed that the OA monitors the spectrum of each channel (see e.g., step 384 of Figure 3). However, it would have been obvious to one of ordinary skill in the art at the time of invention to successively test each wavelength. One is motivated as such since, the test run for each site and span, where a OSNR is calculated.

Allowable Subject Matter

4. Claims 1-12 allowed.
5. Claim 14-17 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

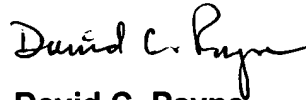
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to David C. Payne whose telephone number is (571) 272-3024. The examiner can normally be reached on M-F, 7:00a - 4:30p.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jason Chan can be reached on (571) 272-3022. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Dcp


David C. Payne
Primary Examiner
AU 2633